In the Matter of STOKELY BROTHERS & COMPANY, INC. AND VAN CAMP'S, INC. *and* FEDERAL LABOR UNION NO. 21752, AFFILIATED WITH A. F. OF L.

In the Matter of STOKELY BROTHERS & COMPANY, INC. AND VAN CAMP'S, INC. *and* AMALGAMATED ASSOCIATION OF IRON, STEEL & TIN WORKERS OF AMERICA, LOCAL NO. 1473, AFFILIATED WITH THE C. I. O.

In the Matter of STOKELY BROTHERS & COMPANY, INC. AND VAN CAMP'S, INC. *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, LOCAL UNION 135, AFFILIATED WITH A. F. OF L.

Cases Nos. R-1382, R-1383, R-1384, respectively.—Decided October 4, 1939

Food Canning Industry—Investigation of Representatives: controversy concerning representation of employees: rival organizations; controversy as to appropriate unit; contract executed between Company and one union after both parties had notice of claims of rival unions held not to preclude determination of all issues raised—*Units Appropriate for Collective Bargaining:* (1) regular and junior employees at both plants and warehouse, including or excluding truck drivers depending upon results of election directed among them; seasonal employees at Indianapolis excluded because no union involved seeks to bargain for them; (2) seasonal employees at Martinsville plant; (3) controversy as to craft unit for truck drivers or combination with regular and junior employees at both plants and warehouse in industrial unit; desires of men to determine—*Elections Ordered*

Mr. Lester M. Levin, for the Board.

Messrs. Kurt F. Pantzer, *Gustav H. Dongus*, and *Paul Y. Davis*, of Indianapolis, Ind., for the Companies.

Messrs. Pryor & Davidson, by *Mr. Frank Pryor*, of Frankfort, Ind., and *Mr. Hugh Gormley*, of Indianapolis, Ind., for the Federal Union.

Mr. Benjamin C. Sigal, of Pittsburgh, Pa., for the Amalgamated.

Weiss, Seligman & Born, by *Mr. Ezra Weiss* and *Mr. Jacob Weiss*, Indianapolis, Ind., for the Brotherhood.

Mr. Ben Law, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On October 20, 1938, Federal Labor Union No. 21752, affiliated with the American Federation of Labor, herein called the Federal Union, filed with the Regional Director for the Eleventh Region (Indianapolis, Indiana) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Van Camp's, Inc., Indianapolis, Indiana, herein called Van Camp's, at its Martinsville plant, Martinsville, Indiana, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.[1]

On March 1, 1939, Amalgamated Association of Iron, Steel & Tin Workers of America, Local No. 1472, affiliated with the Congress of Industrial Organizations, herein called the Amalgamated, filed with the Regional Director for the Eleventh Region (Indianapolis, Indiana) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Van Camp's at its Indianapolis, Indiana, plant and warehouse and its plant at Martinsville, Indiana, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act.[2]

On March 31, 1939, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local 135, affiliated with the American Federation of Labor, herein called the Brotherhood, filed with the Regional Director for the Eleventh Region (Indianapolis, Indiana) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Stokely Brothers & Company, Inc. and Van Camp's, herein called the Companies when referred to together, at the Indianapolis, Indiana, plant, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the Act.

On April 12, 1939, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Sections 3 and 10 (c) (2), of National Labor Relations Board Rules and Regulations—Series 1, as amended, issued its order consolidating the cases based upon the three petitions above mentioned for all purposes, and ordered an investigation and authorized

[1] The petition was amended on March 27, 1939, to name the employer as Stokely Brothers & Company, Inc. and Van Camp's, Inc.

[2] The petition was amended on March 31, 1939, to name the employer as Stokely Brothers & Company, Inc. and Van Camp's, Inc.

the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On April 19, 1939, the Regional Director issued a notice of hearing, copies of which were duly served upon the Companies, upon the Federal Union, upon the Amalgamated, and upon the Brotherhood. A copy was also served upon Steel Workers Organizing Committee. On April 25, 1939, the Regional Director issued a notice of postponement of hearing, copies of which were duly served upon all of the above-mentioned parties. Pursuant to notice duly served upon all the parties, a hearing was held May 15 to 20, 1939, at Indianapolis, Indiana, before James C. Paradise, the Trial Examiner duly designated by the Board. The Federal Union, the Brotherhood, the Amalgamated, and the Companies were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.[3]

During the hearing the Brotherhood and the Federal Union moved for separate hearings in the cases raised by their petitions. Van Camp's filed three different motions that the Trial Examiner issue a subpena calling upon the Regional Director for the Eleventh Region to appear and testify. The Trial Examiner denied the above motions. His rulings are hereby affirmed. Also during the hearing Stokely Brothers & Company, Inc. and Van Camp's moved separately that each of the three petitions be dismissed. The Companies together moved to quash the proceedings. Ruling on these motions was reserved by the Trial Examiner for the Board. The motions are hereby denied. During the course of the hearing the Trial Examiner made other rulings on motions and objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Pursuant to notice, a hearing was held before the Board at Washington, D. C., on June 23, 1939, for the purpose of oral argument. The Brotherhood, the Amalgamated, and the Companies appeared by counsel and the Federal Union by a representative; all four participated in the argument. Briefs were filed at the oral argument by the Companies and the Amalgamated.

[3] On the last day of the hearing counsel for the Companies offered to introduce evidence that striking Van Camp's truck drivers had allowed no trucks to enter or leave the plants involved in this proceeding from March 4, 1939, to the time of the hearing; that the Brotherhood had a reputation in Indianapolis for the use of violence in connection with strikes; that the Brotherhood had plans to commit acts of violence to make the strike effective; and that as a result of the strike Van Camp's had suffered substantial damage to its business. The Trial Examiner asked counsel for the Companies if the purpose of these offers was to prove that the striking truck drivers had lost their status as employees. Counsel for the Companies refused to take a position on this question and accordingly the Trial Examiner excluded the evidence offered on the grounds that it was not relevant. The ruling of the Trial Examiner is hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Van Camp's is an Indiana corporation engaged in canning food products. It operates a plant and warehouse in Indianapolis, Indiana, and a plant at Martinsville, Indiana. The Indianapolis plant is used throughout the year in the packing of non-seasonal items including pork and beans, chile con carne, kidney beans, kraut, spaghetti, hominy, soups, and pureed foods. In season it also packs such seasonal items as pumpkin, catsup, tomatoes, tomato juice, and peas. The Martinsville plant is used solely for the packing of seasonal items, principally peas, tomatoes, tomato products, and pumpkins. At the Indianapolis warehouse many of the products of both the Indianapolis and Martinsville plants are stored, labeled, and prepared for shipping.

For the fiscal year beginning June 1, 1937, 15 per cent of the raw materials used by Van Camp's came from outside Indiana and 94 per cent of the manufactured product was shipped to destinations outside Indiana. Van Camp's gross sales for that year were approximately $5,500,000.

All of the stock of Van Camp's is owned by Stokely Brothers & Company, Inc., an Indiana corporation. Stokely Brothers & Company, Inc. has two other wholly owned subsidiaries operating in California and Washington. It also operates seven plants directly in Indiana. For the fiscal year beginning June 1, 1937, 10 per cent of the raw materials for these plants came from outside Indiana and 87 per cent of the manufactured product was sent to destinations outside of Indiana. Gross sales for the same period approximated $1,700,000.

Stokely Brothers & Company, Inc. and Van Camp's maintain joint sales offices in many of the principal cities of the United States for the supervision of brokers, through whom the major portion of their respective sales are effected to jobbers and large chain stores. Certain sales are also made by the Companies separately through their own salesmen. The Companies occupy office space in the same building in Indianapolis, Indiana, from which the affairs of the two corporations are run by boards of directors, of which W. B. Stokely, Jr., the president of both companies, is the only common member. John B. Stokely and C. A. Nugents, the other two members of the board of directors of Van Camp's are, however, executive vice president and secretary, respectively, of Stokely Brothers & Company, Inc.

This proceeding is concerned only with the representation of persons employed at Van Camp's Indianapolis plant and warehouse and its Martinsville plant.

II. THE ORGANIZATIONS INVOLVED

Federal Labor Union No. 21752, affiliated with the American Federation of Labor, is a labor organization admitting to its membership non-supervisory employees at the Martinsville plant of Van Camp's.

Amalgamated Association of Iron, Steel & Tin Workers of America, Local No. 1473, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to its membership employees at the Indianapolis plant and warehouse and the Martinsville plant, exclusive of supervisory, clerical, and laboratory employees, field men, farm contractors, agricultural workers, and sales force.

International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local Union 135, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees at the Indianapolis plant engaged in driving trucks.

III. THE QUESTION CONCERNING REPRESENTATION

The Amalgamated first started to organize among the employees at the Indianapolis plant and warehouse and the Martinsville plant in February 1937, and was chartered on March 31, 1937. In May 1937, after a series of conferences between Van Camp's officials and Amalgamated representatives, a contract was executed. It was effective from June 1, 1937, until May 1, 1938, and under it Van Camp's recognized the Amalgamated as exclusive bargaining agency for employees whose services were paid for on an hourly or piece-work basis, but not including superintendents, foremen, field men, farmer-contractors, agricultural workers, clerical, laboratory, and sales force, engaged at the Indianapolis plant and warehouse and the Martinsville plant. Shortly thereafter Van Camp's submitted its May 29, 1937, pay roll, and the Amalgamated its membership cards, to the Board's Regional Office. The Board's Field Examiner checking the cards against the pay roll reported as follows: Of 431 employees listed for the Indianapolis plant and warehouse 320 had signed Amalgamated cards. Of 24 employees listed for the Martinsville plant, 19 had signed Amalgamated cards.

Upon the expiration of the June 1, 1937, contract, a second contract was executed, dated May 1, 1938, effective until March 31, 1939, and containing the same recognition clause as that stated above.

In August 1938, the Federal Union started to organize among employees at the Martinsville plant. On October 14 and 18, 1938, a Federal Union representative made calls upon Van Camp's officials in Indianapolis, claimed that his union represented a majority of the Martinsville employees, and presented a proposed contract form. The Van Camp's officials informed him that the company was already bound by the contract it had with the Amalgamated, which specifically covered Martinsville employees, and that there was nothing further that they could do. The Federal Union accordingly filed its petition on October 20, 1938.

In late January 1939, the Brotherhood started to organize among Van Camp's truck drivers. During February 1939, at a series of conferences held with the Companies' officials, Brotherhood representatives claimed that they represented a majority of the truck drivers and requested a collective bargaining contract. The Companies referred to the May 1, 1938, contract between the Amalgamated and Van Camp's, stated that it covered truck drivers, and refused the request for a contract. Thereafter, on February 27, 1939, most of the truck drivers went on strike for several hours. They returned to work the following day, but on March 4, 1939, nine truck drivers again struck and were still out at the time of oral argument in this case. No other truck drivers were hired by Van Camp's to take the place of those on strike.

On March 1, 1939, the Amalgamated filed its petition and on March 31, 1939, its amended petition. Both petition and amended petition stated that the Federal Union and the Brotherhood also claimed to represent employees within the appropriate unit for which the Amalgamated requested that it be certified as bargaining agency.

On March 30, 1939, a third contract between Van Camp's and the Amalgamated was executed by which Van Camp's recognized the Amalgamated as exclusive bargaining agency for "all people employed or paid by the Company at its plant at 2002 South East Street, its warehouses [4] in the City of Indianapolis, Indiana, and its plant in Martinsville, Indiana, * * *, but not including superintendents, foremen, field men, farmer-contractors, agricultural workers, clerical, laboratory or sales force." This contract, though executed on March 30, 1939, was dated April 1, 1939. It set March 31, 1941, as its date of termination.

On March 31, 1939, the Brotherhood filed its petition.

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[4] During the proceedings the Indianapolis warehouse was referred to as both the Indianapolis warehouse and the Indianapolis warehouses. At the oral argument counsel for the Companies explained that during the period involved, Van Camp's warehousing accommodations in Indianapolis had been shifted from what is known as the Dilling warehouse to the Marmon warehouse, two miles from the Indianapolis plant. Hence the occasional use of the plural form.

At the hearing and oral argument the Companies argued in substance that because of the April 1, 1939, contract between the Amalgamated and Van Camp's, no question concerning representation is raised by the Amalgamated's petition. We do not feel that the case can be disposed of on that ground. At the time the contract was entered into, Van Camp's had full notice of the representation claims of both the Federal Union and the Brotherhood and of the fact that those claims conflicted with claims of the Amalgamated. The Federal Union had filed its petition some 5 months before execution of the contract and Van Camp's had been so notified. The Brotherhood had informed Van Camp's of its claims at least a month before and had effectively brought them to the Companies' attention by a prolonged strike.

In other cases we have held that a contract entered into under such circumstances does not preclude a determination of all the issues raised.[5]

As indicated by its petition, the Amalgamated does not seek to rely upon its contract with Van Camp's but requests certification by the Board as exclusive bargaining agent for all employees within what it alleges is the appropriate unit covered by the contract.

We find that a question has arisen concerning representation of employees of Van Camp's.

IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

We find that the question concerning representation which has arisen, occurring in connection with the operations of the Companies described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE APPROPRIATE UNIT

The Amalgamated contends that an appropriate unit consists of all people employed or paid by the Company at its plant at 2002 South East Street, Indianapolis, Indiana, its warehouse in Indianapolis, Indiana, and its plant in Martinsville, Indiana, but not including superintendents, foremen, field men, farmer-contractors, agricultural workers, clerical, laboratory, or sales force, or seasonal workers.

[5] See *Matter of American-West African Line, Inc.* and *National Marine Engineers Beneficial Association*, 4 N. L. R. B. 1086; *Matter of Wilmington Transportation Company* and *Inland Boatmen's Union of the Pacific, San Pedro Division*, 4 N. L. R. B. 750; *Matter of California Wool Scouring Company* and *Textile Workers Organizing Committee*, 5 N. L. R. B. 782. See also *Matter of Southern Chemical Cotton Company* and *Textile Workers Organizing Committee*, 3 N. L. R. B. 869.

The Brotherhood contends that an appropriate unit consists of employees at the Indianapolis plant engaged in driving trucks, exclusive of production, maintenance, supervisory, and clerical employees.

The Federal Union contends that an appropriate unit consists of production and maintenance employees at the Martinsville plant, excluding supervisory and clerical employees, field men, farmer-contractors, agricultural workers, and sales force, but including seasonal employees at that plant.

Truck drivers

The issues raised by conflicting claims of the Amalgamated and the Brotherhood concerning employees working as truck drivers will be considered first. The Brotherhood contends that truck drivers should constitute a separate unit, alleging as grounds that their working conditions and interests differ from those of production employees, that under the terms of the contracts between Van Camp's and the Amalgamated truck drivers have been excluded from the unit therein declared to be appropriate, and that the Amalgamated has not only failed to bargain for them in the past but has recognized the appropriateness of a separate unit for truck drivers by requesting the Brotherhood to organize them and assisting it in doing so. The Amalgamated and Van Camp's contend that truck drivers do not constitute a separate appropriate unit.

Under the terms of the June 1, 1937, and the May 1, 1938, contracts Van Camp's recognized the Amalgamated as bargaining agent for employees "whose services are paid for on an hourly or piece-work basis." Under the April 1, 1939, contract the language quoted above was dropped and Van Camp's recognized the Amalgamated as bargaining agent for "all people employed or paid by the company," with stated exceptions. Truck drivers were not specifically referred to in any of the contracts.

At the hearing and oral argument the Amalgamated and Van Camp's contended that under the contracts truck drivers were included within the unit therein declared to be appropriate. The Brotherhood, on the other hand, contended that the contracts excluded truck drivers from the unit, alleging that they are paid a weekly wage rather than on an hourly or piece-work basis and that they had not been bargained for pursuant to the contracts.

With regard to the method by which truck drivers have been paid, the traffic manager for Van Camp's testified that before execution of the first contract, Van Camp's had discovered that because drivers on occasion were away from the plant for several days at a time there was a special problem in keeping a current record of their working hours. Van Camp's accordingly developed the system of paying its

truck drivers so much an hour on the basis of a 48-hour week. Thereafter, when the weekly reports were totaled, if it should appear that a driver had worked more than 48 hours during the week, the extra amount due would be computed according to the number of hours worked over 48 and that amount would be added to the driver's pay check for the following week. If it should appear that the driver had worked less than 48 hours, the amount he had been overpaid would be computed and deducted from his pay check for the subsequent week. This system was then modified further in that the number of hours worked was computed in part according to the number of miles run.

Soon after the June 1, 1937, contract between Van Camp's and the Amalgamated was signed the four drivers then employed had a conference with Van Camp's officials to arrive at an understanding as to how the contract affected the system by which they were paid. They agreed that the method as outlined above should be continued.

It is possible that this method of determining truck drivers' compensation, considered as a combination of an hourly wage and a piece-work system, brought them within the unit covered by the June 1, 1937, and May 1, 1938, contracts. An indication to the contrary lies in the fact that truck drivers did not receive a 7½ cent per hour wage increase provided for employees within the unit under the June 1, 1937, contract. Furthermore, in January of 1939 the president of the Amalgamated accompanied and actively supported a Brotherhood representative while the latter urged several of the truck drivers to join the Brotherhood.

All of the evidence as to whether truck drivers have in the past been included within the unit urged by the Amalgamated is, therefore, highly contradictory. In so far as the function and working conditions of truck drivers are concerned, suffice it to say that the evidence is such that they could either constitute a separate unit or be combined with production and maintenance employees in a single unit. In accordance with our previous rulings in this type of case, we hold that the determining factor is the desire of the employees themselves.[6]

On this point the record is inconclusive. An election will therefore be ordered among the truck drivers to determine whether they desire to be represented by the Brotherhood, by the Amalgamated, or by neither. If the Brotherhood is accorded a majority, the truck drivers will be considered as constituting a separate unit. If the Amalgamated is accorded a majority, the truck drivers will be considered as combined with the unit of regular and junior employees

[6] See *Matter of Allis-Chalmers Manufacturing Company* and *International Union, United Automobile Workers of America, Local 248*, 4 N. L. R. B. 159.

at Van Camp's Indianapolis plant and warehouse and Martinsville plant, discussed below, in a single unit.

Van Camp's March 4, 1939, pay roll was the last regular pay roll before 9 of the 12 truck drivers listed thereon went out on strike. We shall, therefore, direct that employees eligible to vote in the election shall be truck drivers listed on the March 4, 1939, pay roll, including truck drivers who did not work during such pay-roll period because they were ill or on vacation, and truck drivers who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause.

The two plants and the warehouse

Van Camp's Martinsville plant is 30 miles distant from the Indianapolis plant. The Indianapolis warehouse, where much of the product of both plants is labeled and stored, is 2 miles from the Indianapolis plant. As has been stated, the Indianapolis plant and warehouse are engaged throughout the year in the canning of non-seasonal food products and from about the last of May to the last of November of each year in the canning of seasonal food products. The Martinsville plant packs only seasonal products from May to November.

The operation of both plants and warehouse is directed from Van Camp's central offices in Indianapolis. Vegetables used are received from farms located in a rough circle or ellipse around both plants. Either plant may receive its vegetables from any part of the entire area depending on weather conditions, the size of the crop from day to day, and conditions at the plants. From time to time the entire pack of a particular crop may be processed at one plant for reasons of economy, size of the crop, or to prepare the other plant for a succeeding crop. In general it is Van Camp's policy to use the Indianapolis plant as much as possible because costs are ordinarily lower there. In this connection one Van Camp's official said at the hearing, "Even though located 30 miles away we still look on Martinsville as the 8th floor of the Indianapolis plant. We carry the supplies of stock for them. We take their raw materials; they take ours. We used to freely interchange workmen. We prefer at every instance where we can to run the product at Indianapolis for economic reasons." Manufacturing operations at the two plants are substantially the same. Questions of labor policy affecting both plants and the warehouse are determined from Van Camp's central offices in Indianapolis.

Pursuant to the contracts between Van Camp's and the Amalgamated, collective bargaining has been on the basis that employees at the Indianapolis plant and warehouse and the Martinsville plant

together constitute a single appropriate unit. This course of bargaining must be considered as qualified, however, by the fact that it was almost entirely on behalf of regular and junior employees to the exclusion of seasonal employees, as will be discussed below.

Under the June 1, 1937, contract between the Amalgamated and Van Camp's, three classifications of employees were recognized by the parties. These were regular employees, junior employees, and seasonal employees. These same classifications, which are founded on real distinctions among the employees, were retained under the May 1, 1938, and the April 1, 1939, contracts. As indicated by specific provisions of the contracts quoted in the footnote below,[7] regular employees are those who have worked for 60 or more days out of 90 consecutive days on non-perishable products. Junior employees are all others who work on non-perishable products. Regular and junior employees include maintenance as well as production workers. Seasonal employees are those who work on perishable products alone. The term is used hereafter in this sense. Regular and junior employees, of course, may work on perishable as well as non-perishable products. The Amalgamated, the Federal Union and Van Camp's all referred to the three types of employees in the same manner as they are defined by the contracts.

The status of seasonal employees we will consider fully below. Here we note that self-organization among the vast majority of regular and junior employees at the Indianapolis plant and warehouse and the Martinsville plant has been in one union, the Amalgamated, and on the basis that regular and junior employees at both plants and

[7] Section 1 (B), clause 1, of the April 1, 1939, contract provides, "Regular Employees are those who on April 1, 1939, were entitled to be classified as Regular Employees under the Collective Bargaining Agreement dated May 1, 1938. Others may become Regular Employees under operation of the last sentence of clause (2) of this section." The May 1, 1938, agreement referred to above, refers back in like manner to the June 1, 1937, contract which defines regular employees as "Employees who were in the employ of the Employer for 90 working days in the period beginning November 1st, 1936, and ending June 1, 1937," and in addition provides that persons employed for 60 days out of any 90-day period in preparing and preserving non-perishable products shall be classed as regular employees if they continue in Van Camp's employment.

Section 1 (F) of the April 1, 1939, contract also provides in part, "labeling, warehousing and shipping of canned perishable products performed at times other than the canning periods of perishable products shall be considered as work on non-perishable products."

Section 1 (B), clause 2, of the April 1, 1939, contract provides, "Junior Employees are those employed by the Company, other than Regular Employees mentioned above, in any work on non-perishable products. When any Junior Employees, after April 1, 1939, works on non-perishable products for the Company for sixty days out of any ninety consecutive days, said Employee, if he continues to work for the Company, shall be classed as a Regular Employee."

Section 1 (B), clause 3, of the April 1, 1939, contract provides, "Seasonal Employees are those other than Regular or Junior Employees who are employed by the Company in addition to Regular and Junior Employees to work during the pack of perishable products. When the Company has occasion to employ Seasonal Employees, the Company will give preference in hiring, so far as practicable, to Seasonal Employees who have worked during the pack of perishable products in previous seasons. Seasonal Employees can become Junior Employees by being employed on the production of non-perishable products."

the warehouse constitute a single unit. Both the Amalgamated and Van Camp's request the single unit. The Federal Union, however, while making no claims concerning employees at the Indianapolis plant and warehouse, asks that non-supervisory regular and junior employees at the Martinsville plant be included with seasonal employees at the Martinsville plant in a separate unit. Of the 21 regular or junior employees listed on the May 6, 1939, pay roll of the Martinsville plant, none have joined the Federal Union. All 21 are members of the Amalgamated. The preference of these employees for inclusion with regular and junior employees at the Indianapolis plant and warehouse in a single unit seems clear.

None of the parties desired inclusion of superintendents, foremen, field men, farmer-contractors, agricultural workers, clerical workers, laboratory workers, or the sales force within the appropriate unit. Since the interests and conditions of employees so classified are substantially different from those of production and maintenance workers, we shall exclude them.

We conclude that regular and junior employees of Van Camp's Indianapolis plant and warehouse and its Martinsville plant, including or excluding truck drivers depending upon the results of the election to be directed among them, but excluding superintendents, foremen, field men, farmer-contractors, agricultural workers, clerical workers, laboratory workers, and sales force, constitute a unit appropriate for the purposes of collective bargaining. The propriety of inclusion of seasonal workers in such a unit remains to be considered.

Seasonal employees

At the hearing and oral argument the Amalgamated took the position that seasonal employees should be excluded from the unit of regular and junior employees at the Indianapolis plant and warehouse and the Martinsville plant, and that they have not been covered by its contracts with Van Camp's. The Federal Union contends that seasonal employees should be included within the separate unit of production and maintenance employees it seeks to have established at the Martinsville plant. We have already rejected the Federal Union's contention for including the regular and junior Martinsville employees in a separate unit with Martinsville seasonal employees. However, the status of seasonal employees remains for our determination.

Van Camp's contends that seasonal employees should be, and that under the terms of its contracts with the Amalgamated they have been and still are, within a single unit of production and maintenance employees at the Indianapolis plant and warehouse and the Martins-

ville plant. Van Camp's and the Amalgamated thus take opposite positions upon the question of proper interpretation of their contracts in so far as the inclusion of seasonal employees within the unit therein adopted is concerned.

Evidence adduced at the hearing showed that seasonal employees, unlike regular and junior employees, are hired for work during the "run" or "pack" of one or more perishable products. At the end of the pack, they are discharged and before being hired again the following year, or during a later pack the same year, they must reapply at the plant gates for a job. As stated in the contracts, those who have worked for Van Camp's before are given preference in hiring so far as practicable. It appears that about 50 per cent of the seasonal employees are transients. Some others are housewives, college students and teachers on vacation, and laborers otherwise temporarily unemployed. Some return year after year to work on perishable products, though the extent of this practice is not made clear. The record indicates that most seasonal employees may work for between 2 and 8 weeks during a season. Some work as little as 2 days during a season.[8]

The number of seasonal employees as compared with regular and junior employees is high. This is especially so at the Martinsville plant where from 18 to 25 persons, largely engaged in maintenance work except during the packing season, are employed throughout the year. During the packing season, from May to November when seasonal products are canned, as many as 200 seasonal workers may be added to the pay roll. At the Indianapolis plant and warehouse between 300 and 400 employees are engaged throughout the year in canning non-seasonal products and in maintenance work. Between May and November, when seasonal as well as non-seasonal products are canned, as many as 1,600 seasonal workers may be added to the pay roll.

In support of its contention that seasonal employees should be excluded from the appropriate unit, the Amalgamated insisted that collective bargaining for them is a practical impossibility because of the short and variable term of their employment and their constantly shifting identity. Upon the question of whether seasonal employees are included in the unit with regular and junior employees pursuant to the contracts, the evidence is inconclusive. It is clear, however, that the Amalgamated does not want to bargain for seasonal employees and that their problems and working conditions are substantially different from those of regular and junior employees. We con-

[8] The Amalgamated stated in its brief that seasonal employees worked an average of 32 days, and regular employes worked an average of 190 days in 1938.

clude that seasonal employees should be excluded from the unit composed of regular and junior employees at Van Camp's Indianapolis plant and warehouse and Martinsville plant.[9]

Seasonal employees at the Martinsville plant

We have determined that seasonal employees should be excluded from the unit of regular and junior employees employed at Van Camp's Indianapolis plant and warehouse and its Martinsville plant. No union here involved seeks to represent seasonal employees at the Indianapolis plant or warehouse. The Federal Union, however, desires to represent seasonal employees, exclusive of those in a supervisory capacity, at the Martinsville plant. It has organized a substantial number of those employed during the 1938 season and has shown that a number of them return from year to year to work on the pack of perishable products at Van Camp's. We see no reason why seasonal employees at the Martinsville plant should not be permitted to engage as a unit in collective bargaining. We conclude, accordingly, that seasonal employees at Van Camp's Martinsville plant constitute a unit appropriate for the purposes of collective bargaining.

We find that all persons employed by Van Camp's at its plant at 2002 South East Street, Indianapolis, Indiana, its warehouse in Indianapolis, Indiana, and its plant in Martinsville, Indiana, excluding seasonal employees, superintendents, foremen, field men, farmer-contractors, agricultural workers, clerical workers, laboratory workers, and sales force, and including or excluding truck drivers depending upon the results of the election to be directed among them, constitute a unit appropriate for the purposes of collective bargaining and that such unit will insure to employees of Van Camp's the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

We find that seasonal employees at Van Camp's Martinsville, Indiana, plant, exclusive of those in a supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining and that such unit will insure to employees of Van Camp's the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

[9] See *Matter of Seymour Packing Company* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 176*, 12 N. L. R. B. 1098; *Matter of Bishop & Company, Inc.* and *United Cracker, Bakery, and Confectionery Workers, Local International Union No. 212*, 4 N. L. R. B. 514.

VI. THE DETERMINATION OF REPRESENTATIVES

Regular and junior employees at the Indianapolis plant and warehouse and Martinsville plant

The Van Camp's pay roll for May 6, 1939, covering the Indianapolis plant and warehouse and the Martinsville plant, was introduced in evidence. It shows 378 employees. No seasonal employees are listed nor do the names of the nine truck drivers then out on strike appear. The Amalgamated introduced application or membership cards signed by every one of the 378 employees listed on the pay roll and also introduced check-off cards signed by all but 13. No evidence tending to discredit the Amalgamated cards was offered by any of the parties. It is thus apparent, and none of the parties dispute, that the Amalgamated represents an overwhelming majority of employees within this unit, regardless of the inclusion or exclusion of the truck drivers. We will, however, withhold certification of the Amalgamated as the bargaining agency for regular and junior employees at Van Camp's Indianapolis plant and warehouse and Martinsville plant until the status of the truck drivers is determined by the results of the election to be held among them.

Seasonal employees at the Martinsville plant

The September 10, 1938, pay roll for the Martinsville plant lists 210 employees. Only 21 of these were regular or junior employees and 189 were seasonal employees. The Federal Union introduced membership cards for 98 of the seasonal employees listed and 9 additional cards for persons it claims were working, but whose names do not appear on the pay roll. None of the persons for whom the Federal Union introduced membership cards were working at the time of the hearing. Although there is evidence that many seasonal employees return from year to year to work on the canning of seasonal products, it cannot be determined from the record to what extent those who have joined the Federal Union will be employed by Van Camp's during the current season. It is obvious, therefore, that the question concerning representation here raised can best be resolved by means of an election by secret ballot.

We will not place the Amalgamated on the ballot because that union has definitely declared its wish not to bargain for seasonal employees. The canning season at the Martinsville plant extends ordinarily from about the last of May to the last of October of each year. Accordingly, we shall determine eligibility to vote in the election on the basis of a current pay roll. We shall direct that seasonal employees eligible to vote in the election shall be those in the appropriate unit who were on Van Camp's Martinsville plant pay roll

next preceding this Direction, including seasonal employees who did not work during such pay-roll period because they were ill, and seasonal employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

Conclusions of Law

1. A question affecting commerce has arisen concerning the representation of employees of Van Camp's, Inc., Indianapolis, Indiana, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All persons employed by Van Camp's at its plant at 2002 South East Street, Indianapolis, Indiana, its warehouse in Indianapolis, Indiana, and its plant in Martinsville, Indiana, excluding seasonal employees, superintendents, foremen, field men, farmer-contractors, agricultural workers, clerical workers, laboratory workers, and sales force, and including or excluding truck drivers depending upon the results of the election to be directed among them, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Seasonal employees at Van Camp's Martinsville, Indiana, plant, exclusive of those in a supervisory capacity, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

DIRECTION OF ELECTIONS

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Van Camp's, Inc., Indianapolis, Indiana, elections by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eleventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among those employees of Van Camp's, Inc., who fall within the groups described below:

1. All truck drivers whose names appear on Van Camp's March 4, 1939, pay roll, including those who did not work during such pay-

roll period because they were ill or on vacation, and those who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented by International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Local 135, affiliated with the American Federation of Labor, or by Amalgamated Association of Iron, Steel & Tin Workers of North America, Local No. 1473, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.

2. All seasonal employees at Van Camp's Martinsville, Indiana, plant, exclusive of those in a supervisory capacity, whose names appear on Van Camp's last regular pay roll next preceding the date of this Direction, including seasonal employees who did not work during such pay-roll period because they were ill, and seasonal employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause, to determine whether or not they desire to be represented for purposes of collective bargaining by Federal Labor Union No. 21752, affiliated with the American Federation of Labor.

MR. WILLIAM M. LEISERSON, concurring:

In view of the facts regarding the truck drivers, as set forth in Chairman Madden's opinion, I do not think it has been established that they were included within the unit covered by the contracts between the Amalgamated and the Company. I accordingly concur in the direction of a separate election among the truck drivers. However, I do not think it is necessary to postpone final determination of the appropriate unit pending the outcome of the election. I would find now that the truck drivers constitute a separate appropriate unit.

I would not certify the Amalgamated as representative of the employees in the unit of regular and junior employees at Indianapolis and Martinsville. The Amalgamated is already the recognized representative of such employees under the existing contract, and since no one disputes its status as such, I would find that no question concerning representation has arisen in that regard. I concur in the remainder of the Decision.

MR. EDWIN S. SMITH, dissenting in part:

I dissent from that portion of the Decision permitting the truck drivers to establish a separate bargaining unit. Here there has been no history of separate bargaining by truck drivers, and the substantial history of contractual relationships between the Amalgamated and Van Camp's points clearly to the appropriateness of

the industrial unit. I see no warrant for allowing this craft group to split itself off from the main body of employees under the circumstances. However, since the majority of the Board have decided that the truck drivers may be separate, I agree with Chairman Madden's opinion that final determination of the unit should await the results of an election among the truck drivers. I also agree with Chairman Madden's opinion that after such final determination is made, the Amalgamated should be certified as representative of the employees in the industrial unit as finally delineated.

I concur in the remainder of the Decision.

[SAME TITLE]

AMENDMENT TO DIRECTION OF ELECTIONS

October 11, 1939

On October 4, 1939, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections in the above-entitled case. The Direction of Elections directed, among other things, that an election by secret ballot be conducted within fifteen (15) days from the date of the Direction among all seasonal employees at Van Camp's, Inc. Martinsville, Indiana, plant, exclusive of those in a supervisory capacity, whose names appear on Van Camp's, Inc. last regular pay roll next preceding the date of said Direction, including seasonal employees who did not work during such pay-roll period because they were ill, and seasonal employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause, to determine whether or not they desire to be represented for purposes of collective bargaining by Federal Labor Union No. 21752, affiliated with the American Federation of Labor.

On October 9, 1939, Amalgamated Association of Iron, Steel and Tin Workers of North America, Local No. 1473, affiliated with the Congress of Industrial Organizations, herein called the Amalgamated, and Steel Workers Organizing Committee, on behalf of the Amalgamated, filed with the Board exceptions to the Direction of Election and requested that the Amalgamated be placed on the ballot for the election to be held among seasonal employees at the Martinsville plant.

Although the Amalgamated offered evidence at the hearing that it had obtained members among seasonal employees at the Martinsville plant, we did not place it on the ballot for the election directed there because at the hearing and oral argument it also insisted that

it was not possible to bargain for seasonal employees and asked that they be excluded from the unit it contended was appropriate.

Since, however, the Amalgamated now expresses a desire to represent the seasonal employees at the Martinsville plant and since it appears from the record that certain of such seasonal employees have, by joining or applying for membership in the Amalgamated, expressed a desire to be represented by that union, we feel that it should be placed on the ballot.

The Board hereby amends paragraph 2 of its Direction of Elections, which applies to seasonal employees at Van Camp's, Inc. Martinsville plant, to read as follows:

2. All seasonal employees at Van Camp's Martinsville, Indiana, plant, exclusive of those in a supervisory capacity, whose names appear on Van Camp's last regular pay roll next preceding the date of this Direction, including seasonal employees who did not work during such pay-roll period because they were ill, and seasonal employees who were then or have since been temporarily laid off, but excluding those who have since quit or been discharged for cause, to determine whether they desire to be represented for purposes of collective bargaining by Federal Labor Union No. 21752, affiliated with the American Federation of Labor, or by Amalgamated Association of Iron, Steel and Tin Workers of North America, Local No. 1473, affiliated with the Congress of Industrial Organizations, or by neither.